Item 1

PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
March 24, 2011

Present: Member Pedro Reyes, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Reyes called the meeting to order at 9:35 a.m. Executive Director Drew Bohan called the roll. Member Lujano was absent from the meeting room.

ELECTION OF OFFICERS

Item 1 Staff Report

Mr. Bohan stated that the annual election of officers is the first order of business for the first meeting of the year. Chairperson Reyes asked for nominations for chairperson.

Member Alex nominated the Director of Finance. Member Chivaro seconded. Director of Finance Ana Matosantos was elected chairperson by a vote of 6-0.

Chairperson Reyes asked for nominations for vice-chairperson and then nominated the State Controller. With a second by Member Glaab, the State Controller John Chiang was elected vice-chairperson by a vote of 6-0.

APPROVAL OF MINUTES

Item 2 December 2, 2010

Mr. Bohan noted a blue handout with corrections to the December 2, 2011 minutes. With a motion for approval by Member Chivaro and a second by Member Glaab, the December 2, 2010 hearing minutes were adopted, as corrected, by a vote of 6-0.

(*Member Lujano entered the meeting room*.)

CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

PROPOSED STATEWIDE COST ESTIMATES

Item 11* *Local Government Employment Relations,* 01-TC-30

Government Code Sections 3502.5 and 3508.5
Statutes 2000, Chapter 901 (SB 739)
California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

City of Sacramento and County of Sacramento, Claimants

Item 12* *Local Agency Formation Commissions,* 02-TC-23
Government Code Section 56425, Subdivision (i)(1) (formerly Subdivision (h)(1))
Statutes 2000, Chapter 761 (AB 2838)

Sacramento Metropolitan Fire District, Claimant

Item 13* *Cal Grants,* 02-TC-28
Education Code Section 69432.9, Subdivision (b)(3)(C)
Statutes 2000, Chapter 403 (SB 1644)
California Code of Regulations, Title 5, Sections 30007, 30023, Subdivisions (a) and (d), and 30026

Long Beach Community College District, Claimant

ADOPTION OF PROPOSED AMENDMENTS TO REGULATIONS

Item 15* Final Regulations to Amend Conflict of Interest Code
California Code of Regulations, Title 2, Chapter 2.5., Article 9, Section 1189.10 and Appendix.

Member Worthley made a motion to adopt items 11, 12, 13, and 15 on the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 7-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 3 Staff Report (if necessary)

There were no appeals to consider.

HEARING AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, INCORRECT REDUCTION CLAIMS, AND STATEMENTS OF DECISION, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Drew Bohan, Executive Director, swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS

Item 4 *Discrimination Complaint Procedures,* 02-TC-46, 02-TC-25 and 02-TC-31
Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011, 72012, 72013, 72014, 87101, and 87102 Statutes 1976, Chapter 1010; Statutes 1981, Chapter 470 (AB 1726); Statutes 1982, Chapter 1117 (AB 3133); Statutes 1983, Chapter 143 (AB 1949); Statutes 1984, Chapter 1371 (SB 2252); Statutes 1988, Chapters 973 (AB 1725); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 1198 (AB 617); Statutes 1998, Chapter 914 (SB 1999); Statutes 1999, Chapter 587 (AB 537); and Statutes 2002, Chapter 1169 (SB 2028)
California Code of Regulations, Title 5, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220
"Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002)
(Consolidated With)
Government Code Sections 11135, 11136, 11137, 11138, and 11139 Statutes 1977, Chapter 972(AB 803); Statutes 1992, Chapter 913 (AB 1077); Statutes 1994, Chapter 146 (AB 3601); Statutes 1999, Chapter 591 (AB 1670); Statutes 2001, Chapter 708 (AB 303); Statutes 2002, Chapter 300 (AB 3035); Statutes 2002, Chapter 1102 (SB 105)
California Code of Regulations, Title 5, Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330 , 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362
Register 96, number 23; Register 2001, number 6; Register 2002, number 13; and Register 2002, number 35;
Los Rios, Santa Monica and West Kerns Community College Districts, Claimants

Kenny Louie, Commission Counsel, presented this item. Mr. Louie stated that *Discrimination Complaint Procedures* addresses state anti-discrimination laws as they apply to community college districts in the areas of employment, provision of programs and activities to students, and procedures that are used to deal with allegations of discrimination.

Mr. Louie pointed out that the primary areas in dispute are whether or not the regulations setting forth the minimum conditions entitle districts to state aid for state-mandated activities. Staff finds that they do not. The other issue, according to Mr. Louie, is whether the statutes and regulations in the areas of employment, student equity, and discrimination complaint procedures impose federal mandated activities. Staff finds that some of the statutes and regulations do impose federal mandates.

The parties were represented as follows: Keith Petersen representing the test claimants and Susan Geanacou representing the Department of Finance.

Mr. Petersen stated that this test claim pulled two items from the *Minimum Conditions for State Aid* test claim which is currently scheduled for hearing in May. Some of the legal issues in this claim will have an effect on some of the legal issues in that claim as well.

Mr. Petersen stated that, in his March 1, 2011 response to the draft staff analysis, he raised the following five issues: (1) test claimants would like to abandon a portion of the reimbursement period as a result of the *Connerly* case; (2) disagreement with the standard of review that the staff uses; (3) disagreement with portions of the federal mandate analysis; (4) disagreement with all of the minimum conditions analysis; and (5) disagreement with some of the findings regarding the programs. He only intended to address objections one, four, and five at this hearing.

Mr. Petersen stated that the issue of the abandonment of a portion of the test claim is a procedural issue. He said that the reason the claimants want to abandon the two-month period is because the *Connerly* case changed the *Equal Employment Opportunity* program from the affirmative action program. Based on the date the test claim was filed, the change occurs two months after the start. Since this is covering seven or eight years, Mr. Petersen said it would be less confusing for the claimants and much easier to write parameters and guidelines if the claimants give up that two-month period of the old law and start with the new law.

Ms. Shelton stated that Commission regulations only allow for an abandonment of statutes that have been pled. And the claimant does not want to withdraw any of those statutes because they are relevant after the period of reimbursement. Therefore, after a discussion, staff decided to go forward with the claim as it stands. If this or any other claimant chooses to abandon that period of reimbursement and the Commission adopts the staff recommendation to partially approve this test claim, then those eligible claimants simply do not have to seek reimbursement on a reimbursement claim with the Controller's Office.

Mr. Petersen agreed that was for the best and said that he was not formally abandoning the pre-*Connerly* reimbursement period. Chairperson Reyes asked if a motion was needed. Ms. Shelton said no because there was no request to sever or abandon.

Mr. Petersen stated his disagreement with the findings that some of the statutes or regulations are reimbursable activities. He found most of the activities were analyzed consistently with Commission procedure but took issue with one particular item referenced in his March 1, 2011 letter.

Mr. Bohan clarified that the Commission members did not have a paper version of Mr. Petersen's comments because they were issued flash drives instead.

Member Worthley stated that, going forward, if someone wanted to reference a specific document, he or she should bring copies for the Commission members. Both Member Worthley and Member Olsen stated that the new system is preferable since it uses less paper.

Mr. Petersen said that the issue on the *Discrimination Complaint Procedures* Program is that there is essentially a two-step complaint process. One is an informal complaint process handled mostly by the college district; that is someone complaining that they were improperly discriminated against. The other is a formal State Chancellor's Office appeal process.

Mr. Petersen stated that the claimants disagree with the finding that the appeal process on the Chancellor's Office level does not impose any activities. The staff analysis says, however, there is no language in those sections that requires community college districts to engage in any activity and that is what is pertinent. Mr. Petersen agreed with the analysis that there are no words that say that when an appeal is filed, the district as a party to the appeal must respond. Nor does it say when the chancellor calls or sends a brief to the college, the college must respond.

However, it seemed essential that the appeal process, which is a complaint against the district, involve the district. The regulations indicate that the Chancellor's Office is indeed involving the district. And an appeal should involve all the essential parties in a complaint that is filed against the community college district.

Mr. Petersen likened this case to another commission claim, *Pupil Discipline Records*. In that case, the plain law stated that the district that received the transfer student must request discipline records on the student from the district that sent the transfer student. The law did not say that the district that sent the student had to send the records; but the purpose of the mandate would not have been implemented unless the sending district sent the records to the receiving district.

Mr. Petersen reiterated that the community college district is not the one who starts the appeal, but rather, is the party against which the complaint is filed by an individual. Therefore, the community college district has to be a party to the appeal and participate.

Commission regulations regarding parameters and guidelines require that a description of specific costs and types of costs that are reimbursable, including one-time costs and ongoing costs, and a description of the most reasonable methods of complying with the mandate be included. Mr. Petersen emphasized "The most reasonable methods of complying with the mandate are those methods not specified in the statute or executive order, but that are necessary to carry out the mandate program."

Mr. Petersen concluded that, if not as a matter of exact words and statute but, as a matter of the most reasonable and necessary method, a community college needs to respond to those appeals and, therefore, it should be a reimbursable activity.

Susan Geanacou, Department of Finance, stated that Finance agrees with the Commission's final staff analysis.

Member Olsen clarified that, on *Pupil Discipline Records*, the Commission said this issue could be addressed in the parameters and guidelines phase.

Ms. Shelton stated that she had not reviewed *Pupil Discipline Records* in preparation for this hearing nor had she heard the argument made. She said that the issue before the Commission is whether or not there is a mandate as a matter of law. She said the first step is to find out if the regulation does mandate an activity on school districts. If the Commission finds that it does mandate an activity, then, at the parameters and guidelines phase, other additional activities can be included that are reasonably necessary to comply with the mandated activity. Based on the plain language of the regulation, there is no mandated activity imposed on the district.

Member Worthley asked if it would be possible to apply the provision of practical compulsion to this situation. Ms. Shelton replied that there must be evidence of practical compulsion in the record and, in this case, there is not. She believes Mr. Petersen was making a legal compulsion not a practical compulsion argument. Mr. Petersen stated that he did not know if parties were legally compelled to participate in formal administrative adjudications. Ms. Shelton believes that, in the case of *Pupil Discipline Records*, there was some procedure laid out and that a mandate in that language could be found.

Mr. Louie stated that the plain language of the law does not require these activities and an argument has not been set forth that they are practically compelled. There is no evidence that they were practically compelled to engage in the activities. Mr. Petersen stated that he agreed to an extent but the parameters and guidelines regulation specifically says it does not have to be stated in the statutes or regulations.

Mr. Louie pointed out that that language is a parameters and guidelines issue. Here, the Commission is making a mandates finding and plain language does not mandate these activities.

Member Worthley asked if it is possible that this might be addressed again as another issue in the parameters and guidelines. Ms. Shelton pointed out that since the recommendation is for the Commission to deny the regulation that would not be possible.

Ms. Shelton further reminded Commission members that the decision to be made at the current stage in the process was one of law. However, at the parameters and guidelines stage, the Commission members could exercise their discretion.

Member Worthley commented that this matter has previously come before the Commission, and will probably come again in the future. It would be good to come up with some sort of way to deal with it. He agrees with counsel that the failure to say "Thou shalt" is almost an omission by default. He stated that everybody intends that people will respond. He believes that the Legislature is not inclined to want to fix the issue because it means that they do not have to pay for something. He stated that he would like to look at the issue because he sees it as a practical compulsion issue.

Member Chivaro asked if the commission was ready for a motion. Chairperson Reyes answered in the affirmative and asked if there was any further discussion. Mr. Petersen asked, if the Commission adopts the staff position, would it then foreclose it from becoming an issue at the parameters and guidelines stage. Ms. Shelton answered that if the Commission adopts the regulation then the statute would not even be discussed during parameters and guidelines.

Member Chivaro made a motion to adopt the staff recommendation with a second from Member Lujano. Ms. Geanacou asked if the motion was on the entire analysis or the issue on which Mr. Petersen just testified. Chairperson Reyes stated that the motion could be held until Mr. Petersen finishes and Finance has an opportunity to comment.

Mr. Petersen continued with the threshold issue of whether compliance with the 20 programs known as *Minimum Conditions* is required for state funding. The provisions of the subchapter sections 51000 through 51207 are the 20 different programs. Two of them, as part of this test claim, are adopted under the authority of Education Code 70901, and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Mr. Petersen stated that the claimant's position is that the language, since it is a regulation, has the same force as a statute, by itself is legally compelling, and that staff's subsequent analysis of the *Kern* case and the *POBOR* case to discuss practical compulsion is not required.

Mr. Petersen read from the analysis that, "The Chancellor's Office and the claimants both describe the language as providing that most of the regulations pled by the claimants establish minimum conditions for the receipt of state aid." He stated that it appears the Chancellor's Office intended that it be coercive and compulsory. Also in the analysis, Commission staff spent several paragraphs describing what the language does not exclude which led to the *Kern* analysis.

The *Kern* case dealt with school districts who establish school site councils, informal small groups that meet on particular issues. Some are funded by federal agencies, others by state categorical money. After several years of being in operation, a state law was passed requiring that those groups write and post agendas. The test claim was filed to get reimbursement for the agendas.

The subsequent litigation said that since the district voluntarily decided to operate those committees, any subsequent mandate downstream was not reimbursable. That is the essence of the *Kern* analysis. For *Kern* to work, there would have to be a precursor program and a downstream program.

The 20 programs, Mr. Petersen argued, putatively are downstream, but they are not downstream of any other program. Section 51000 is not a program, but rather a coercive requirement compelling implementation of the 20 programs at the risk of losing state aid. Therefore, the facts of *Kern* do not fit. Title 5, section 51000, is not a precursor program voluntarily established by the college districts. That leads to the *POBOR* analysis, which requires proof of coercion, proof of severe penalty.

Mr. Petersen explained that the *POBOR* case had to do with school districts and colleges requesting reimbursement for training and other costs for peace officers. The court decided that employing peace officers at school districts and colleges was a discretionary act, and there was no coercion to do so. That is not the case here. Every college is being coerced to comply with those programs.

Mr. Petersen again referred to his March 1, 2011 letter for the *Minimum Conditions* penalty review by the Chancellor's Office and the Board of Governors. The regulations require the Chancellor's Office to review the community college districts every seven years to see if they are complying with this coercion; or if they are notified otherwise, the Board of Governors has jurisdiction over alleged non-compliance. He cited an example of alleged non-compliance in the hiring of the chancellor at San Mateo Community College. The chancellor's staff recommended a penalty of $500,000 for violating one or two sections of the *Equal Employment Opportunity* program, which coincidentally is the subject of this test claim.

The Board of Governors had three choices: agree with what the district did, discuss a remediation plan, or penalize. In this case, they did not penalize. The staff analysis indicates that is proof that section 51000 is not coercive. And it indicates there is no evidence in the record that there is a severe penalty to back up the coercion.

Mr. Petersen alleged that Section 51000 is sufficient and legally compelling. But for there to be evidence in the record of severe loss of funding, it appears there would have to be extreme malfeasance by community college personnel. They would have to intentionally ignore the requirements of those 20 programs.

Mr. Petersen suggested that it is unlikely there is ever going to be that sort of evidence because community college district officers are professional public servants who do not behave in that manner. He then asked that the Commission staff reconsider their treatment of this legal issue, with directions that *Kern* is not applicable and POBOR is not applicable, factually.

Mr. Louie responded that *Kern* specifically states that these activities are conditions and there is no legal requirement to engage in these activities. Nor is there practical compulsion or evidence that there are certain severe penalties.

Member Worthley stated that there was still the possibility of a penalty. There is the authority to impose such draconian measures.
Mr. Louie rebutted that there is no evidence of what the certainty or severity of those consequences would be.

Member Worthley reiterated that he believes the issue is not whether there is a factual situation, but rather, is there a legal ability to impose these measures on the local agency. Mr. Louie explained that there was actual evidence of consequences in each of the cases from the federal mandate analysis used in the draft staff analysis. For example, double taxation of state

businesses or termination of the state unemployment insurance program were certain consequences.

Mr. Petersen stated that, regarding practical compulsion, he believes the Commission's position is rather disingenuous. For federal mandates, the Commission often finds that there is practical compulsion for schools, cities and counties to implement federal mandates that threaten fund loss or future program loss or threaten potential litigation. However, none of those actually occur, rather they are threats. For that reason, Mr. Petersen believes the Commission is applying a different standard to require that the chancellor of the various community college districts actually impose certain consequences. He continues to allege that section 51000 is legally compelling and sufficient on its own.

Ms. Shelton clarified that there is not a lot of case law to help with this situation. She pointed to two federal mandates where either the plain language said "there shall be..." or actual litigation was occurring. Those were the key differences in statutes used in the staff recommendation.

Member Glaab, understanding the Commission's duty to adjudicate cases, suggested that this claim be brought back to the next hearing to allow staff and the claimant to work out some issues.

Susan Geanacou, Department of Finance, stated that Finance supports the staff analysis and Mr. Louie's comments about the lack of certainty regarding any adverse or severe consequences. Ms. Geanacou pointed out the key distinction in the analysis between entitlement to receive state aid versus the actual receipt of aid.

Mr. Petersen questioned the substantive legal difference between "being entitled to" and "receiving" state aid. Ms. Shelton stated that under the rules of statutory construction, the Legislature chose to use those words and therefore, they must have meaning.

Mr. Petersen countered by saying that community colleges are entitled by their mere existence as community colleges. And, that entitlement is subject to an action, after the fact if they fail to comply. Mr. Louie stated that a failure to comply does not necessarily lead to a direct loss of funds.

Member Alex asked Ms. Shelton to clarify when does practical compulsion need to be raised and is it purely factual. Ms. Shelton responded that a decision has to be made as to whether or not there is a mandated program. Clearly the law says, based on the Constitution, that they must be mandated by the state. There has to be strict legal compulsion which is based on the plain language of the statute. The courts have suggested, although they have yet to find, a situation where the local government has been practically compelled by the circumstances. Under that situation, it must be shown that, despite the language or the silence of their discretionary triggering decision, the downstream requirements are practically compelled because there are certain and severe penalties imposed if they fail to comply. That is a first element of finding whether or not there is a reimbursable state mandated program. The practical compulsion is based on facts and evidence in the record, but ultimately, it is a question of law.

Member Alex asked that those facts would be in the record at this point and staff's finding was that there are no facts to give rise to a practical compulsion determination. Ms. Shelton confirmed that was correct.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Lujano, the staff recommendation to deny the test claim was adopted by a vote of 6-1, with Member Worthley voting no.

Item 5 Proposed Statement of Decision: *Discrimination Complaint Procedures,* 02-TC-46, 02-TC-25 and 02-TC-31
[See Item 4 above.]

Member Chivaro made a motion to adopt the proposed statement of decision. With a second by Member Alex, the statement of decision was adopted by a vote of 6-0 with Member Olsen abstaining.

Item 6 *School Facilities Funding Requirements,* 02-TC-30, 02-TC-43 and 09-TC-01
Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, 39003, 39120 and 100620 as added or amended by Statutes 1976, Chapter 557 (AB 3884); Statutes 1977, Chapter 242 (AB 645); Statutes 1978, Chapter 362 (SB 1917); Statutes 1982, Chapter 735 (AB 3598); Statutes 1990, Chapter 1602 (SB 2262); Statutes 1991, Chapter 1183 (AB 928), Statutes 1996, Chapter 277 (SB 1562); Statutes 1997, Chapters 513 (AB 553), 893 (SB 161), and 940 (SB 1105); Statutes 1998, Chapters 407 (SB 50), 485 (AB 2803), 691 (SB 1686), 741 (AB 89), 848 (AB 2696), 941 (AB 191), 957 (SB 2045), and 1076 (SB 2126); Statutes 1999, Chapters 133 (AB 1633), 709 (AB 1136), 858 (AB 695), 992 (AB 387) and 1002 (SB 162); Statutes 2000, Chapters 44 (AB 1908), 193 (AB 2586), 443 (AB 2644), 530 (AB 2408), 590 (SB 2066), and 753 (SB 1795); Statutes 2001, Chapters 132 (SB 1129), 159 (SB 662), 194 (AB 1558), 422 (AB 1478), 647 (AB 401), 725 (SB 575), 734 (AB 804) and 972 ( ); and Statutes, 2002, Chapters 33 (AB 16), 199 (AB 693), 935 (AB 14), 1075 (SB 21), and 1168 (AB 1818)
Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23 (SB 47)
Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668 (SB 352); Statutes 2004, Chapter 689

(SB 945); Statutes 2007, Chapter 130 (AB 257): and, Statutes 2008, Chapter 148 (AB 2720)
California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18, 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24
Substantial Progress and Expenditure Audit Guide of May 2003; School Facility Program Guidebook of January 2003; State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1988
Clovis Unified School District, Claimant

Senior Commission Counsel Heather Halsey presented this item. Ms. Halsey stated that this test claim addresses the activities required of school districts as a condition of receipt of school facility funding pursuant to the test claim statutes and regulations. Staff found that the decisions to acquire a new school site, build a new school, undertake a school modernization project, add portable classrooms and accept state facility program funding, issue local bonds or participate in one of the other voluntary programs pled in this test claim are discretionary decisions; and that based on the analysis in *Kern* court decision, the downstream requirement to comply with *School Facilities Funding Requirements* is not reimbursable. Additionally, staff found there is no evidence in the record to support a finding of practical compulsion.

The claimant disagreed, asserting school districts are legally and practically compelled to build new schools and otherwise provide additional classrooms. Staff recommended that the Commission adopt the staff analysis to deny the test claim.

The parties were represented as follows: Art Palkowitz representing the test claimant and Donna Ferebee representing the Department of Finance.

Art Palkowitz stated that the claimant is requesting that the activities that relate to schools to receive funding, whether it be state funding or the issuance of local bonds, are a reimbursable mandate based on legal and practical compulsion.

Mr. Palkowitz said that public education is a statewide concern, but not one brought about by local agencies. Once a school decides to build a new facility, it must comply with numerous state agency requirements. For example, beginning with the California Department of Education (CDE), the school must have a site approval, final plans approval and then go through escrow. The school is required to comply with the Field Act as well as the Division of State Architects (DSA) regarding the construction of the school.

It is quite a task to build a school; a task that is required by the state. Therefore, the claimant believes there is a legal compulsion by the requirement that the state requires the school district to provide public education; and there is practical compulsion.

Mr. Palkowitz stated that once a facility is built, it is the property of the state. The district or local agency is only a trustee of that facility. Because of Proposition 13, they cannot levy taxes. This is a text book example of what the Legislature thought. They realized that the state was going to pass the financial burden to local agencies. However, shifting financial responsibility for carrying out government functions to local agencies is prohibited by Article XIII B and schools should be reimbursed for those activities.

Mr. Palkowitz submitted that the practical compulsion of not building a school is exactly what the courts considered severe consequences. Public education constitutes nearly 40 percent of the state's budget, a high priority. There is a draconian consequence if a school is not built.

In the analysis, staff detailed examples of options that may be done before it is decided to build a school facility. Mr. Palkowitz agreed that those are options a school must go through before making a decision to build. However, after these options are analyzed, it is clear that public education and providing education at the local level is an enhanced service to the public; a new activity and the basis for having reimbursable mandates. Mr. Palkowitz pointed out that the claimant does not dispute the decision regarding the hazardous waste and other items.

Donna Ferebee, Department of Finance, stated that Finance agreed with the final staff analysis that there is neither a legal nor a practical compulsion to construct or build a school.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Chivaro, the staff recommendation to deny the test claim was adopted by a vote of 4-2, with Member Glaab and Member Worthley voting no and Chairperson Reyes abstaining.

Item 7 Proposed Statement of Decision: *School Facilities Funding Requirements*, 02-TC-30, 02-TC-43 and 09-TC-01
[See Item 6 above.]

Member Olsen made a motion to adopt the proposed statement of decision. With a second by Member Chivaro, the statement of decision was adopted by a vote of 6-1, with Chairperson Reyes abstaining.

B. PARAMETERS AND GUIDELINES AND STATEMENT OF DECISION

Item 8 *Municipal Storm Water and Urban Runoff*, 03-TC-04, 03-TC-20 and 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Parts 4C2a., 4C2b, 4E & 4F5c3
Filed September 2, 2003, (03-TC-04) filed by the County of Los Angeles
Filed September 30, 2003 (03-TC-20) by the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, and Westlake Village
Filed September 30, 2003 (03-TC-21) by the Cities of Bellflower, Commerce, Covina, Downey, Monterey Park, Signal Hill, South Pasadena, Vernon

Senior Staff Counsel Eric Feller presented this item. Mr. Feller stated that the parameters and guidelines for the test claim are based on a permit issued by the Los Angeles Regional Water Quality Control Board. The Commission approved the test claim for placing and maintaining trash receptacles at transit stops for local agencies not subject to a trash TMDL (Total Maximum Daily Load). The primary issue in dispute is whether the installation activities in the parameters and guidelines are reasonably necessary to comply with the mandate. The LA Regional Water

Board and Department of Finance contend the activities go beyond the scope of the mandate, but the claimants contend that they are reasonably necessary to comply with the mandate.

Staff found that the activities in the parameters and guidelines are reasonably necessary to comply with the mandate. Staff also limited the installation activities to one time per transit stop, limited pickup to no more than three times per week, and deleted graffiti removal as a reimbursable activity.

The Department of Finance and State Controller's Office also asserted that the reasonable reimbursement methodology (RRM) should not be adopted but reimbursement should be based on actual costs. Staff found that there is substantial evidence in the record to support the RRM of $6.74 for the ongoing maintenance activities, and that the RRM complies with the statutory requirements.

Staff recommended that the Commission adopt the staff analysis as its decision and the attached parameters and guidelines and RRM as modified by staff.

Parties were represented as follows: Leonard Kaye representing the county claimants; David Burhenn representing the city claimants; Jon Walker and Wendy Bui for the County of Los Angeles; Carla Shelton and Susan Geanacou for the Department of Finance; Jim Spano and Jay Lal for the State Controller's Office; and Allan Burdick for the California State Association of Counties and League of California Cities.

Leonard Kaye, Los Angeles County, thanked the Commission staff for their diligence and very finely crafted decision and analysis on this matter. Mr. Kaye agreed with the staff recommendation. He requested a clarifying change on the language which was previously submitted and he was prepared to answer any questions.

David Burhenn, representing the city claimants, echoed Mr. Kaye's appreciation for the hard work on this matter in terms of the municipal storm water area. He also agreed with the suggested changes. Mr. Burhenn urged the Commission members to approve the RRM.

Jon Walker, County of Los Angeles, concurred with the staff recommendation. Wendy Bui, County of Los Angeles, also agreed with the recommendation and stated she was involved with coming up with the costs for the county.

Jay Lal, State Controller's Office, stated that the Controller's Office had reservations about approving the RRM because: (1) it is based on a survey response of seven out of 85 cities/county reported expenditures that have not been validated; and (2) the respondents' survey developed by the cities and county resulted in greater costs for the eight cities/county sampled than the actual expenditures stated in the survey over the seven-year period.

Carla Shelton, Department of Finance, stated that the claimants addressed some concerns, however, Finance still believes some of the activities found to be reasonably necessary go beyond the scope of the mandate. Ms. Shelton specifically expressed concern with actual costs and one-time costs.

Mr. Feller explained that the one-time costs are for transit stops that are moved while the ongoing costs are for receptacle pads that go missing or become damaged beyond use.

Member Olsen asked if staff was satisfied with the claimant's proposed changes. Mr. Feller responded in the affirmative and that the staff recommendation included those clarifying changes.

Susan Geanacou, Department of Finance, asked if Commission staff had any feedback on the Controller's concerns raised about the RRM. Member Alex also questioned the survey issue and asked staff to comment.

Mr. Feller stated that staff has not had time to consider those concerns as they were just raised today. Member Chivaro asked for the difference between actual costs and the hourly rate. Mr. Kaye pointed to an analysis he had prepared in anticipation of those concerns. While a copy of the analysis was passed out, Mr. Kaye explained that, considering the unit cost for each claimant, using non-weighted average and average costs, and coming up with the variance by jurisdiction, he was able to illustrate accurate and reflective numbers.

Chairperson Reyes then questioned the small sample survey. Mr. Kaye said that while the number of respondents to the survey was small, the number of trash pickups represented between 50-70 percent of all pickups.

Camille Shelton stated that, when adopting an RRM, Commission staff must determine whether or not the proposal is representative of the eligible claimant pool. Staff believed that it was representative of both large and small agencies, even though it only had seven of the 85 claimants.

Jim Spano, State Controller's Office, commented that the costs have not been verified. He suggested that his office could go to the survey respondents, look at the data that was used in reporting the actual costs, and validate that those costs are true and correct. This could be done in about six months or less.

Mr. Kaye responded by reading into the record parts of Government Code sections 17558.5 (a) and 17561 (d)(2) as they pertained to initiation of an audit and audit application of an RRM. He added that the claimants are required to retain their documentation that supports reimbursement including the number of trash receptacles and the number of trash collections. He welcomed Mr. Spano to come down for a visit.

Mr. Spano responded that his suggestion was not an audit of a claim because a claim has yet to be filed. Rather, it was an opportunity to validate data used in developing an RRM.

Ms. Shelton clarified that when the statute was adopted, it was intended to allow the Commission to adopt an RRM without having an audit of the actual costs occur before a number was put into the parameters and guidelines. It was meant to balance simplicity and accuracy. She explained that if the Commission adopts the RRM of $6.74, that number cannot be challenged by the Controller's Office. They could audit the number of trash pickups but could not change the RRM number.

Chairperson Reyes expressed concern about not seeing agreement from the fiscal state agencies regarding the proposed RRM of $6.74.

Ms. Shelton explained that a request to amend the parameters and guidelines could be submitted if it turns out that this number is too high or too low. Chairperson Reyes then said the claimants are not required, however, to retain documentation so there would be no data to analyze. Ms. Shelton suggested that another option would be to adopt an actual cost requirement, get data in over a couple of years and then develop another RRM.

Mr. Feller stated that the claimants have been doing these trash pickups since 2002, and that this seems like the right case for an RRM.

Mr. Kaye concluded by saying that a ballpark figure of total costs to the state using this RRM would be to multiply between 12,000 to 14,000 pickups by $6.74 and adding actual costs for the pad installations. He continued that this is a money saver for local governments. It has gotten much support from the cities as well as endorsement from the California State Association of Counties (CSAC).

With a motion by Member Worthley to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to adopt the parameters and guidelines and RRM was adopted by a vote 7-0.

Chairperson Reyes pointed out that everybody was pleased with Mr. Feller's analysis and with Ms. Halsey's and Mr. Louie's analyses. Member Worthley commented that he has read novels shorter than Mr. Louie's tome.

C. INCORRECT REDUCTION CLAIM

Item 9 *Mandate Reimbursement Process,* 01-4485-I-01

Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764 (AB 75)
Statutes 1992, Chapter 1116 (AB 3521)
State Agency Model Integrated Waste Management Plan (February 2000)
Redwood City Elementary School District, Claimant

Item 10 Proposed Statement of Decision
See Item 9 Above

Chair Reyes stated that items 9 and 10 had been continued.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED AMENDMENTS TO REGULATIONS

Item 14 Final Regulations to Implement Mandate Redetermination Process Pursuant to Government Code Section 17570, Subdivision (d) (Stats. 2010, Ch. 719, eff. October 19, 2010 (SB 856))
California Code of Regulations
Title 2, Chapter 2.5., New Article 10, Sections 1190-1190.05

Program Analyst Heidi Palchik and Senior Staff Counsel Heather Halsey presented this item. Ms. Palchik stated that the Commission adopted emergency regulations to implement the new mandate redetermination process pursuant to Government Code section 17570. At that time, the Commission also adopted an order to initiate permanent regulations while those emergency regulations were in effect. This item would implement the permanent regulations for the new mandate redetermination process.

Ms. Palchik discussed the comments submitted by the California School Boards Association (CSBA) that urged the Commission to resolve the ambiguity of Government Code section 17570, modify the regulations to add a definition of *"materiality,"* and amend the regulations to say that the requester has the burden of proof to show by a preponderance of the evidence that the change in law would change the underlying determination.

Staff responded to CSBA's comments but continues to recommend the language originally proposed. Therefore, staff recommends that the Commission adopt the regulations, finding that no alternative would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective as, and less burdensome to affected private persons than the proposed regulations, and adopt the proposed amendments to sections 1181.1 and 1181.2, and the addition of Article X, effective 30 days after filing with the California Secretary of State, and authorize staff to make any non-substantive, technical corrections requested by the Office of Administrative Law or Barclays Official California Code of Regulations prior to publication.

Parties were represented as follows: Deborah Caplan representing the California School Boards Association.

Ms. Caplan expressed appreciation for staff's comments to CSBA's letter which serve to highlight some of the questions and concerns that were initially raised. Ms. Caplan stated that the primary issue is about whether section 17570 is supposed to be used for any change in liability, meaning the amount that the state owes to the local governments; or is it only to be used for changes in liability, meaning the liability for the mandate determination: ultimately whether or not there is a mandate.

Ms. Caplan explained that under Government Code sections 17514 and 17556, the Commission finds whether or not a statute or executive order impose duties that are subject to reimbursement. The concern is the ambiguous language in the redetermination statute itself. CSBA contends the language should be read to mean a new test claim determination is appropriate whenever the underlying mandate determination is changed. If costs change or new activities are added or deleted, they should be subject only to a parameters and guidelines amendment.

Ms. Shelton agreed that this is a complicated area. She explained that when a test claim is filed, an analysis is done on each alleged mandated activity to determine whether that activity constitutes a new program or higher level of service, and whether that activity imposes costs mandated by the state. Often times, the Commission will partially approve a test claim for certain specific activities that meet the entire mandates analysis.

A parameters and guidelines amendment cannot conflict with the underlying decisions and cannot delete a state-mandated activity. In order to file a request for redetermination, the party has to show that there is a change in liability of the underlying mandate determination for that reimbursable state-mandated activity.

Ms. Shelton explained that the pleading is up to the test claimant who picks and chooses statutes and how to title the test claim. That is not within the control of the Commission. A test claim is a request for the reimbursement of several activities within several different articles and chapters of the code of regulations. Each one of those activities goes through the full-blown analysis of the elements that are required under the Constitution.

Ms. Halsey interjected that each activity is mandated individually. Often, an analysis will find that some activities are mandated while other activities are not. The law could change to affect one of those activities and not another activity.

Ms. Shelton continued that the activities listed in the statement of decision are those that are mandated by the plain language of the statute. The Commission does not exercise discretion on those activities because it is a question of law. However, those are not necessarily the same activities listed in the parameters and guidelines because there, the Commission has discretion to add more activities that are reasonably necessary to comply with the mandated activities.

It would not be appropriate for a request for redetermination to be filed to change one of those extra activities that the Commission found to be reasonably necessary because that is discretionary. That would be a parameters and guidelines amendment. It would only be appropriate to file a redetermination if the subsequent change in the law changes one of those activities that was, continues to be, or is no longer mandated by the statute.

Ms. Caplan verified that each statement of determination actually encompasses many sub-statements. So, a particular mandate would not accurately reflect the number of mandates found in that statement of decision.

Member Alex asked Ms. Caplan to concisely state her concern on behalf of CSBA. Ms. Caplan cited the difficulty in understanding how the proposed regulation would be applied and how the

mandate process truly works from an external perspective. If the intent of the statute and the regulations is to allow for a new test claim determination process to be commenced anytime one of those activities within any one of those dozens and dozens of mandates has changed in some way, either more or less expensive, then it is fundamentally problematic.

Member Worthley offered that the redetermination process would require a fundamental change to determine whether or not there still is a mandate.

Ms. Shelton stated that the proposed regulations require Commission staff to go through a completeness review when a request for redetermination is filed. Part of that review is to see if there is a subsequent change in law and allegation that the state's liability has changed. If staff determines that the filing is not a proper request for redetermination, but is a parameters and guidelines amendment, then staff will send it back to the requester. The requester can appeal that decision, so there are checks and balances along the way.

Ms. Shelton said that CSBA has filed a petition for writ of mandate to challenge the underlying statutes. The Commission is complying with the underlying statutes to initially adopt emergency regulations and now to make those emergency regulations permanent.

Allan Burdick, CSAC and California League of Cities, pointed out that they have been working closely with CSBA on this issue. However, this discussion is becoming a little problematic in terms of understanding what this regulation is doing because the language is not clear. Mr. Burdick suggested delaying this decision.

Ms. Halsey stated that delaying a decision would create a lapse in the Commission regulations. If a redetermination request were filed during that lapse, staff would only have the statute to use without any procedures. Ms. Shelton stated that it would create problems with whatever procedures were used during that lapse because they could be viewed as underground regulations.

Chairperson Reyes reviewed the rulemaking process to include CSBA's comments and staff's response to those comments. He cited the options of postponing a decision which would create that lapse in Commission regulations or adopting the staff recommendation notwithstanding CSBA's concerns. He asked if the regulations could be amended in the future to address some of the current issues being raised. Ms. Shelton stated that any party may request that the Commission start a new regulatory package.

Next, Ms. Caplan expressed concern with the two hearing process and staff's citation of the *NRDC* case which had a very different, two-phase process from the Commission's proposed process. Ms. Caplan explained that in the *NRDC* case, there had to be an evidentiary standard met. The Commission's proposal requires only a substantial possibility, not even a probability that the underlying statute liability has changed. So really, there is no difference between the second and the first hearing. There is no burden of proof on the requesters in the first hearing except to show that they are likely to get to the second hearing.

Member Olsen offered to move the regulatory package as it currently stands but wanted acknowledgment on the record that she found this two-hearing issue to be compelling.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Chivaro, the staff recommendation to approve the proposed amendments to the regulations was adopted by a vote of 7-0.

STAFF REPORTS

Item 17 Legislative Update

Assistant Executive Director Nancy Patton presented this item. Ms. Patton explained three bills that affect the mandate process. AB 202, by Assembly Member Brownley, is a spot bill sponsored by the Assembly Education Committee. It is not clear what is planned for that bill at this point.

SB 64, by Senator Liu, is sponsored by the California Association of School Business Officials, California School Boards Association, and School Innovations and Advocacy. This bill proposes to revise the process for how school districts file test claims. Commission staff met with the sponsors' staff and the author's office to discuss the mandates process and how this bill would work. They are contemplating amendments, so an analysis will not be done yet because it could change.

SB 112, also by Senator Liu, is sponsored by the State Controller's Office. The bill would provide the State Controller with 30 additional days to issue claiming instructions. It would also clarify that when the Commission adopts amendments to the boilerplate language in parameters and guidelines and those amendments do not result in any increase or decrease in costs; it would limit the period of reimbursement and make it prospective only.

Item 18 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton stated that there were new filings. As mentioned earlier, CSBA filed a lawsuit challenging the redetermination statutes in addition to the budget trailer bills that were enacted for this last budget. CSBA is also challenging all of Government Code section 17500 with respect to the school districts.

The next case is a cross-petition filed by the County of Los Angeles and the cities involved in the water permit that was discussed earlier. They are challenging the activities that were denied by the Commission.

One case has been dismissed. The County of Santa Clara's IRC on *Handicapped and Disabled Students* is scheduled for the May hearing. There is also a demurrer filed by the state.

Ms. Shelton then highlighted some cases of interest. There is a published opinion issued by the Fourth District Court of Appeal in *CSBA vs. State*. That case deals with the deferral of mandates for school districts. The court found that the deferral was not appropriate and unconstitutional. But the remedy is provided in statute in section 17612, to allow the local government to file a declaratory relief action in Sacramento County Superior Court to enjoin the enforcement of that statute. That remedy is appropriate. The claimants in that case were trying to get the court to direct an appropriation, and the court did not do that.

The *California School Boards Association vs. Arnold Schwarzenegger* case challenges the blue-pencil appropriation for *Handicapped and Disabled Students*. The petition alleged that there was a separation of powers violation with the Governor actually suspending the program. The court disagreed with that petition and denied it saying that the Governor was not exercising suspension authority but was properly exercising the blue-pencil authority.

Item 19 Executive Director's Report

Executive Director Drew Bohan presented his report. Mr. Bohan noted the formatting changes that were made to test claim analyses and other documents. Staff expanded the executive summaries and added a claims chart as a reference tool. He welcomed feedback from the Commission members.

Mr. Bohan then highlighted the backlog reduction plan. He explained that, as indicated in the September 15, 2011 report to the Director of Finance, the Commission would prepare a backlog reduction plan for incorrect reduction claims. Staff is proposing to look at the whole package because every minute staff shifts from test claims to focus on IRCs is a minute lost on test claim work. The Commission has approximately 15 test claims from 2002 with about 400 statutes and 500 regulations that are cited in these test claims. These claims were from before the statute was amended to narrow the claim time frame.

Staff's plan contemplates completing all 2002 claims by the end of this calendar year at best; and at worst, this next fiscal year. Then staff can move on and complete the 2003, 2004 and 2005 claims in calendar year 2012; and 2006, 2007, and 2008 claims by calendar year 2013.

Mr. Bohan also pointed out that the oldest IRC was completed today by being withdrawn. Staff is working diligently on the next oldest one and would proceed with the standard approach of dealing with the oldest things first. However, after meeting with the claimant community, staff got a suggestion to not necessarily take everything in order. There are times when, because those 2002 claims are largely education-related claims, staff should work on some local government claims as well.

Mr. Bohan stated that, out of the 163 IRCs that are pending, about 102 of them focus on just two programs. Staff has been working closely with Mr. Spano at the Controller's Office and the other claimants to see if they can resolve some of the issues that would address most or all of those IRCs together.

PUBLIC COMMENT

Richard Hamilton, Director of CSBA Education Legal Alliance, commented on pending litigation.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates,* Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]

2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et. al., Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff, Order No. R9-207-000*, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

3. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control*

Board, and California Regional Water Control Board San Diego Region, Sacramento County Superior Court Case No. 34-2010-80000604 [[*Discharge of Stormwater Runoff, Order No. R9-207-000*, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et. al., Los Angeles County Superior Court Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

5. *California School Board Association (CSBA) v. State of California* et. al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]

6. Cross Petition: *County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a)(1).

- Personnel Subcommittee Report

Hearing no further comments, Chairperson Reyes adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation.

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:55 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation.

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 11:56 am.

Drew Bohan
Executive Director